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ISTA

Interactive video data Trade Association Inc.

409 Mendocino Ave Suite C
Santa Rosa CA
95401-8513
(707) 578-7229 t
(707) 578-5582 f
don@wirelessplus.com

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Attention: Federal Communications Commission
Office of the Secretary William Caton

From: ISTA, Don Lounibos

Subject: Comment: Amendment of Part 1 of the Commission 's Rules...Competitive Bidding Preceding. Order, Memorandum Opinion and Order and Notice of Proposed Rule Making WT Docket No. 97-82.

We believe that the commission should adopt a definition of "gross revenues" and a uniform approach for financial size attribution, using an affiliate and controlling interest attribution standard: some clarification of the term affiliate should be included. With respect to "gross revenues" if a company has no earnings over a three year period and is merely a "shell company" it should be made clear on the form 175 in accordance with the Small Business Act, 15 U.S.C. 632(a). All documents supplied should be Audited financial statement. (all income received by an entity, whether earned or passive before deductions... If an entity was not in existence for all or part of the relevant period. gross revenues shall be evidenced by the audited financial statements of the entity 's predecessor-in-interest. if there is no identifiable predecessor-in-interest un- audited financial statements certified by the applicant as accurate...) We believe that un-audited statements will not and should not be accepted We are in disagreement with the PCS rule that allows the applicant to use un audited financial statements and allowing the gross revenues to be certified by its chief financial officer or its equivalent. We conclude and agree that the attributable investor should not hold more than 25% and the this entity cannot hold a control group function within the organization. Thus in calculating gross revenues, we would concur to include the gross revenues of the controlling principals of the applicants and their affiliates, with the term 'control" including both de jure and de facto control of the applicant.

We believe that it would be appropriate to modify the installment payment rule, Section 1.2110(e), for future auctions in the following respect: (1) establish a maximum interest-only period of two years, while retaining the authority to increase this period on a service specific basis; (2) but not to provide for slightly higher interest rates, rates should be at the best current prime rate; (3) We do agree that the interest rate for such payment plans should be set on the date that the Public Notice is issued announcing the close of the auction; and (4) We disagree with the other changes in the rules regarding late payments, default payment and grace periods. We believe the 5% /15% penalty is punitive and unproductive in the fact that many investors will shy away from FCC Auction because of it highly speculative and regulatory nature. We believe that the auction process and the billing and collection process should not be managed by the FCC but rather by public company 's. We believe that the "Cross Default" clause would punish business 's for failure in one spectrum and success in another spectrum, spectrum 's should be treated individual business entities.

We believe that the FCC should not adopt "schedules" of installment payment plans and bidding credits for which designated entities qualify (in service-specific rule making proceedings we (FCC) would continue to establish the appropriate size standards for each actionable service). We believe that the bidding credits for small business 's should be across the board and equal for all spectrum. We believe that the FCC should not be involved in the decision of credit worthiness of a company, this task should be undertaken by an accredited banking institution so as not to allow under-funded entities to participate in the auction process.

The unjust enrichment rule, Section 1.211(c), which governs the payment of unpaid principal and accrued interest by licensees utilizing installment payments and seeking to transfer or assign their licenses should conform to the same rules for all spectrum. We agree with the proposal to consider any change in ownership that constitutes a change in control to be a major amendment. We also agree that application amendments that show a change in an applicant 's size which would affect its eligibility for a small business provisions to be a major amendment. We agree with the commission that the FCC should refuse to grant request for additional licenses to be included to a simultaneous multiple-round auction to prevent collusive conduct or gaming.

We believe the FCC should amend Section 1.2105(b)(2) to provide a uniform definition of major amendments to the FCC Form 175. We believe any investor with % interest should submit a list of (1) any business, holding or application for CMRS or PMRS license, five percent or more of whose stock, warrants, options or debt securities are owned by the applicants, (2) any party which holds a five percent or more interest in the applicant, or any entity holding or applying for CMRS or PMRS licenses in which a five percent or more interest is held by another party which holds a five percent or more interest in the applicant, (3) any person holding five percent or more of each class of stock, warrants, options, or debt securities, and (4) in the case of partnerships, the name and address of each partner.

We also agree with the FCC to adopt general ownership disclosure requirements and allow auction applicants to submit ownership information for one auction that would then be stored in a central database and updated as necessary for subsequent auctions rather than requiring re-submission of ownership information on each short-form and long-form application. We also believe that detailed ownership information is necessary to ensure that applicants claiming designated entity status and all other applicants in fact qualify for such status, and to ensure compliance with spectrum caps and other ownership limits. Disclosure of ownership information also aids bidders by providing them with information about their auction competitors and alerting them to entities subject to our anti-collusion rules. Disclosure requirements should not vary whether an applicant is applying for special provisions, such as bidding credits or installment payments. All application information should be made public and accessible under the right of information act.

We believe that the practice of refunding upfront payment before the end of the auction to bidders that lose eligibility to continue in the auction should be continued in order to allow the business person the opportunity to re invest his funds in another business venture as soon as possible.

We agree that the FCC should require all designated entities that win licenses to make their second down payments at the same time. Winning bidders who have petitions to deny pending against them should submit their second down payments to the Commission to be deposited into an escrow account. If the petitions to deny are granted, the bidder would be refunded the amount of the second down payment subject to any default payments owed the Commission. If the petitions to deny are dismissed or denied, the funds would be transferred from the escrow account and applied to the balance owed by the licensee.

We concur that the intent to drop the language "simultaneous multiple round" from Section 1.2104(g) of the rules is correct.

We believe that it would be correct and accurate to allow for "real time" bidding in simultaneous multiple round actions. We conclude that a bid placed and withdrawn in one round should count as activity.

We believe that the Commission should not amend Section 1.2104 to specify that the Commission may establish minimum opening bids, rather than only suggested minimum opening bids. We believe "jump bidding" should not be allowed, maximum bid increments should be enforced. The prevention of the "winner's Curse" should be prevented at all costs.

We believe that the PCS rules governing bid withdrawal payments in the event of erroneous bids should be applied to all auctionable services.

We believe that imposing the default payment of Section 1.2104(g) on all defaulting licensees would serve to discourage defaults and encourage licensees to find private market solutions for default situations. We must also consider the fact that private market solutions might not be available to unqualified entities which were allow by the FCC to participate in the auctions. We believe that the auction process should be carried out by private company's who will pre qualify all auction participants, this would prevent the unnecessary cost by the FCC of re-auctioning the licenses and would impose private market constraints on the FCC Spectrum Auction process.

We agree with those that have suggested a system in which respective bidder personnel certify that persons involved in such discussion are not discussing bidding strategy or other wise divulging bidder information to each other in violation of the anti-collusion rules. Absent a showing that a certification is false, necessary discussions in the ordinary course of business would be permitted during the course of the auction.

We agree with the commission action to "further propose to permit each auction winner to begin construction of its system, at its own risk, upon release of a Public Notice announcing the acceptance for filing of post-auction long-form applications. We tentatively conclude that to do so would further the public interest by expediting, in most cases, the initiation of service to the public".

We agree with the commission that these rules should be simplified and made uniform wherever possible.

Sincerely

Donald F. Lounibos